

105TH CONGRESS
1ST SESSION

H. R. 811

To restore the term of patents and to provide for the publication of patent applications.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 25, 1997

Mr. ROHRABACHER (for himself, Ms. KAPTUR, Mr. CAMPBELL, Mr. HUNTER, Mr. FORBES, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BARR of Georgia, Mr. BARTLETT of Maryland, Mr. BURTON of Indiana, Mr. CALVERT, Mrs. CHENOWETH, Mr. CONDIT, Mr. COX of California, Mr. CUNNINGHAM, Mr. DAVIS of Virginia, Mr. DELLUMS, Mr. DOOLITTLE, Mr. DUNCAN, Mr. FOLEY, Mr. GILLMOR, Mr. GRAHAM, Mr. HANSEN, Mr. HAYWORTH, Mr. LARGENT, Mr. MASCARA, Mr. NEY, Mr. NORWOOD, Mr. PAUL, Mr. ROYCE, Mr. SANFORD, Mr. SCHIFF, Mr. SMITH of Michigan, Mr. STEARNS, Mr. TIAHRT, Mr. TRAFICANT, Mr. WALSH, Mr. WAMP, and Ms. WATERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To restore the term of patents and to provide for the publication of patent applications.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patent Term Restora-
5 tion Act of 1997”.

1 **SEC. 2. PATENT TERMS.**

2 (a) AMENDMENT OF TITLE 35.—Effective on the
3 date of the enactment of this Act, section 154 of title 35,
4 United States Code, as amended by the Uruguay Round
5 Agreements Act, is amended—

6 (1) in paragraph (2) of subsection (a), by strik-
7 ing “and ending” and all that follows in that para-
8 graph and inserting “and ending—

9 “(A) 17 years from the date of the grant
10 of the patent, or

11 “(B) 20 years from the date on which the
12 application for the patent was filed in the
13 United States, except that if the application
14 contains a specific reference to an earlier filed
15 application or applications under section 120,
16 121, or 365(c) of this title, 20 years from the
17 date on which the earliest such patent applica-
18 tion was filed,
19 whichever is later.”.

20 (2) in subsection (c)(1), by striking “shall be
21 the greater of the 20-year term as provided in sub-
22 section (a), or 17 years from grant” and inserting
23 “shall be the term provided in subsection (a)”.

24 (b) TECHNICAL AMENDMENT.—Section 534(b) of the
25 Uruguay Round Agreements Act is amended by striking
26 paragraph (3).

1 **SEC. 3. DEFINITION OF SPECIAL CIRCUMSTANCES TO PRO-**
2 **TECT THE CONFIDENTIALITY STATUS OF AP-**
3 **PLICATIONS.**

4 Section 122 of title 35, United States Code, is
5 amended by striking “as may be determined by the Com-
6 missioner” and inserting “as in any of the following:

7 “(1) In the case of an application under section
8 111(a) for a patent for an invention for which the
9 applicant intends to file or has filed an application
10 for a patent in a foreign country, the Commissioner
11 may publish, at the discretion of the Commissioner
12 and by means determined suitable for the purpose,
13 no more than that data from such application under
14 section 111(a) which will be made or has been made
15 public in such foreign country. Such a publication
16 shall be made only after the date of the publication
17 in such foreign country.

18 “(2)(A) If the Commissioner determines that a
19 patent application which is filed after the date of the
20 enactment of this paragraph—

21 “(i) has been pending more than 5 years
22 from the effective filing date of the application,

23 “(ii) has not been previously published by
24 the Patent and Trademark Office,

25 “(iii) is not under any appellate review by
26 the Board of Patent Appeals and Interferences,

1 “(iv) is not under interference proceedings
2 in accordance with section 135(a),

3 “(v) is not under any secrecy order pursu-
4 ant to section 181,

5 “(vi) is not being diligently pursued by the
6 applicant in accordance with this title, and

7 “(vii) is not in abandonment,
8 the Commissioner shall notify the applicant of such
9 determination.

10 “(B) An applicant which received notice of a
11 determination described in subparagraph (A) may,
12 within 30 days of receiving such notice, petition the
13 Commissioner to review the determination to verify
14 that subclauses (i) through (vii) are all applicable to
15 the applicant’s application. If the applicant makes
16 such a petition, the Commissioner shall not publish
17 the applicant’s application before the Commis-
18 sioner’s review of the petition is completed. If the
19 applicant does not submit a petition, the Commis-
20 sioner may publish the applicant’s application no
21 earlier than 90 days after giving such a notice.

22 “(3) If after the date of the enactment of this
23 paragraph a continuing application has been filed
24 more than 6 months after the date of the initial fil-
25 ing of an application, the Commissioner shall notify

1 the applicant under such application. The Commis-
2 sioner shall establish a procedure for an applicant
3 which receives such a notice to demonstrate that the
4 purpose of the continuing application was for rea-
5 sons other than to achieve a delay in the time of
6 publication of the application. If the Commissioner
7 agrees with such a demonstration by the applicant,
8 the Commissioner shall not publish the applicant's
9 application. If the Commissioner does not agree with
10 such a demonstration by the applicant or if the ap-
11 plicant does not make an attempt at such a dem-
12 onstration within a reasonable period of time as de-
13 termined by the Commissioner, the Commissioner
14 shall publish the applicant's application.

15 The Commissioner shall ensure that publications under
16 paragraph (1), (2), or (3) will not result in third-party
17 pre-issuance oppositions which will delay or interfere with
18 the issuance of the patents whose applications' data will
19 be published.'".

○